IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-758

GASORAMA, INC.,

Petitioner,

v.

IMPERIAL GAS COMPANY OF PUERTO RICO, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

WILFREDO A. GEIGEL
P.O. Box 9187
Santurce, Puerto Rico 00908

Counsel For Petitioner

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INDEX

AUTHORITIES

Cases: **Page**

Page

Page

Constitutional Provisions:

Statutes:

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

The petitioner, Gasorama, Inc., prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico denying review of a summary judgment against petitioner entered by the Superior Court, Caguas part in May 9, 1979.

OPINIONS BELOW

There was no formal opinion of the Supreme Court of the Commonwealth of Puerto Rico in *Imperial Gas Company of Puerto Rico, Inc. v. Gasorama, Inc.*, R-79-212, the Resolutions denying review are set forth as Appendix A (1), (2), (3). The summary judgment rendered by the Superior Court, Caguas Part, civil case 78-5, is set forth herein as Appendix B.

JURISDICTION

The jurisdiction of the Court is invoked under the provisions of 28 U.S.C. 1258 (3).

QUESTIONS PRESENTED

Did the Commonwealth Court deprive petitioner of its constitutional right to due process by not allowing it to assert a defense and a counter claim against respondent under the federal legislation regulating the price of petroleum gas products and by denying petitioner the right to make discovery pertaining to documents relevant to its federal claim?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, §1:

"...nor shall any state deprive any person of life, liberty, or property, without due process of law; ..."

Federal Statutes:

1. Public Law 91-379; 84 Stat. 796 - known as the "Economic Stabilization Act of 1970."

"§ 211. Judicial review

(a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this title, or under regulations or orders issued thereunder, notwithstanding the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court."

STATEMENT OF THE FACTS

On or about January 4, 1978 Imperial Gas Company of Puerto Rico, Inc. filed a collection action against Gasorama, Inc., the petitioner herein. This complaint was later amended. The allegations against Gasorama stated a principal claim for $125,754.80 related to the sale of fuel products, materials and services delivered to Gasorama at its different facilities throughout Puerto Rico during 1977.

Gasorama filed its answer to the Complaint on October 11, 1978 after unsuccessfully trying to obtain certain documents corresponding to the price of gas sold to it by Imperial between January 1974 and September 1977. It was Imperial's contention that the documents in question bore no relevancy to its collection claim.

Gasorama in its defenses denied the debt in part or in whole because Imperial had billed and overcharged it in violation of the federal legislation and regulations. In

addition to the answer Gasorama filed a counter claim against Imperial alleging that Imperial's charges were in violation of the federal statutes and regulations controlling the price of petroleum gas products in effect between January 1974 and September 30, 1977. The counter claim, however, did not state what the amount overcharged was because Imperial had failed to provide the necessary documentation.

Gasorama's request for production of documents for inspection was opposed by Imperial on the grounds that Gasorama's contention could "only be raised in a federal court".

A motion for Summary Judgment was filed by Imperial in which it maintained that judgment should be entered against Gasorama among other things for "frivolous persistence on onerous discovery of irrelevant evidence, refusal to answer a simple interrogatory submitted by plaintiff - in order to delay the payment of the debt". The essence of this motion for purpose of this petition was that "under the applicable federal regulations the state court, Puerto Rican courts included, lack jurisdiction to entertain claims based on alleged violation of federal regulations governing the prices at which LPG may be sold in Puerto Rico". Furtheron, the motion stated, "Even if the alleged claim by Gasorama against Imperial, which is based on groundless allegations of violations to the federal regulations, were supported by sworn statements, the same would be *immaterial* to the case, as the Federal Court for the District of Puerto Rico is the sole court which could entertain in the same. To that effect, the filing of said claim within this suit cannot be directed to any other purpose but to continue delaying the proceedings, due to the economic reasons already mentioned."

Finally, on May 21, 1979 a Summary Judgment was entered against Gasorama. The judgment granted Imperial's total remedy. The court concluded it had no jurisdiction as maintained by Imperial, stating: "The plaintiff is correct insofar §§ 210 and 211 (of the Economic Stabilization Act) clearly confers original and exclusive jurisdiction to the Federal District Court to entertain claims for damages and other purposes, arising of violations to said law". It then added, notwithstanding, that said violations were nonexistent because the law had already expired.

A motion for reconsideration was timely filed on May 14, 1979. Gasorama among other things pleaded that the Court had unjustly entered judgment concluding there were no material controversies on the amounts claimed. It also maintained the Court had erred in finding that the Economic Stabilization Act had expired. Gasorama argued that what the Court was referring to was that § 401 (b)(4) had been abolished by PL 94-163, Title 4, 89 Stat. 946, dated Dec. 22, 1975. It was pointed out that the controls legislation was expanded in 1973 by PL 94-163 and that in December 22, 1975, Congress again legislated measures to regulate the increase of cost through the establishment of the "pass through" cost measures.

The motion for reconsideration was denied by the Superior Court in a resolution dated May 18, 1979 and entered on May 21, 1979. The resolution added that defendant was confused insofar as the Energy Conservation Act PL 94-163 had a different purpose from the Economic Stabilization Act.

On June 5, 1979 Gasorama timely filed with the Supreme Court a Writ of Revision for review of the

Summary Judgment. The basic question was whether the Superior Court had failed to allow Gasorama a reasonable opportunity to make the necessary discovery to allow it to prepare its case adequately and to defend itself against Imperial's claim.

The Supreme Court of Puerto Rico refused to review, notwithstanding the federal law questions raised in the petition. Two requests for rehearing were timely made and both were denied.

REASONS FOR GRANTING THE WRIT

Gasorama was denied its day in Court.

During the years that Gasorama made business with Imperial, Congress had authorized restraints in prices throughout the Nation, particularly in relation to petroleum products to avert a crisis facing the Nation. Gasorama never complained but in December 2, 1977, it started querring about the prices. This was done through letters requesting the refinery delivery tickets of bulk sales to Imperial and the refinery notices to Imperial as to price increases between January 1, 1974 and September 30, 1977. This querry was specifically intended to determine if Imperial was complying with the price regulations ordered by Congress. In return, Imperial sued Gasorama for the price of gas products and other services sold during 1977.

The production of documents for inspection unsuccessfully insisted on during the litigation by Gasorama was a continuation of the investigation commenced prior to the litigation. The documents being sought should contain the pertinent information to determine if Imperial had violated the Congressional pricing policy. They would substantiate Gasorama's

defense and its counterclaim against Imperial for overcharges made in violation of the federal legislation. The Superior Court, however, declared itself without jurisdiction to entertain Gasorama's pleas.

I. The Right To Be Heard

"Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defense", was postulated in *Baldwin v. Hale*, 1 Wall, 223-233, 17 L. Ed 531 (1963). Then in *Windsor v. McVeigh*, 93 US 274, 276, 23 L. Ed 914, 915 this Supreme Court proferred the following question: "Whether the property of the plaintiff could be forfeited by the sentence of the Court in a judicial proceeding to which he was not allowed to appear and make answer to the charges against him, upon the allegation of which the forfeiture was demanded". The Court answered its own question like this:

> " ... 'If assailed there, he could defend there. The liability and right are inseparable, a different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice'. 11 Wall 267. The principle as stated in this language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all

> nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal".

This Supreme Court has held through a long standing rule "that due process requires, at a minimum, that absent a countervailing state interest or overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "wherever one is assailed in his person or his property, there he may defend..." Furtheron, the Court went on to state: "A state must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause". *Boddie v. Connecticut*, 401 US 371, 21 L. Ed 113, 91 S. Ct. 780, (1970). *See also Fuentes v. Shevin*, 407 US 67, 32 L. Ed2d 556, 92 S. Ct. 1983 (1972). This Court has also held in more than on occasion that Puerto Rico is subject to the Due Process requirements of the U.S. Constitution. *Torres v. Commonwealth* _____ U.S. _____ 47 LW 4717, (June 18, 1979). *Calero-Toledo v. Pearson Yatch Leasing Co.*, 466 U.S. 663 (1974).

II. Federal Questions Raised As Defense Do Not Inhibit State Court's Jurisdiction

It has been continuously stated that in order to determine federal jurisdiction, the courts will look solely at plaintiff's complaint rather than any subsequent pleading. That is the fundamental rule. *See St. Mary's Hospital of East St. Louis, Inc. v. Ogilvie* F.2d 1324 (1974); *Lindy v. Lynn*, 501 F.2d 1367 (1974); *Lo-VACA Gathering Co. v.*

The Railroad Commission of Texas, 565 F.2d 144 (1977); *Mountain Fuel Supply Co. v. Johnson*, 586 F.2d 1375 (1978).

Imperial's claim in the Superior Court was a simple collection action. No indication is given that it's action was based on a federal question. The matter was raised by Gasorama without specifying under which federal statute it would defend. Clearly there was no reason to deny Gasorama's assertion, because its defenses and counterclaim arose in part under a federal law which prescribed that "The district courts of the United States, shall have exclusive original jurisdiction of cases or controversies arising under this title, or under regulations or orders issued thereunder, ..." particularly, when it goes on the state: "except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense ... raised in any proceeding before such court." Besides, "a cause cannot be removed from a state court simply because, in the progress of the litigation, it may become necessary to give a construction to the Constitution or laws of the United States." *Tennessee v. Union and Planter's Bank*, 152 U.S. 454 (1893). *See also, Metcalf v. Watertown*, 128 U.S. 586 (1888); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908); *Taylor v. Anderson*, 234 U.S. 74 (1914); *Skelly Oil Co. v. Phillips Petroleum Co.* 339 U.S. 667 (1950); *Phillips Petroleum Co. v. Texaco, Inc.* 415 U.S. 125 (1974).

III. The Summary Judgment

The usefulness and fairness of summary judgments are well recognized when properly applied. This application

under the Rules of Civil Procedure for Puerto Rico is the same as the Federal Rules. In our case, however, it was improvidently granted. As in *Gray Tool Co. v. Humble Oil Refining Co.*, 186 F.2d 365, *Cert. den.* (1951) 341 U.S. 934, 71 S. Ct.

> "that this is another of those all too numerous instances of the misuse of the summary judgment procedure to cut a trial short; that here, as so often before, it has served only to prove that short cutting of trial is not an end in itself but a mean to an end, and that in the conduct of trials, as in other endeavors it is quite often true that the longest way around is the shortest way through".

A summary judgment should be granted "only where it is perfectly clear that no issue of fact is involved and inquiry into the facts is not desirable to clarify the application of he law". *Westinghouse Electric Corp. v. Bulldog Electric Products Co.*, 179 F.2d 139. A summary judgment does not terminate a controversy as a full adjudication, particularly, if the grant is improvident. "They merely return cases for the trials they ought in the first instance to have undergone, and generally with enhanced expenses, to say nothing of delay". Westinghouse (supra). *See also, Phoenix Savings and Loan Inc. v. Aetna Casualty and Surety Co.*, 381 F.2d 245 (4th Cir. 1967).

Since prior to the commencement of the action, Gasorama was trying to establish the invalidity of the prices being overcharged by Imperial; it therefore, immediately commenced its pretrial discovery by the production of documents that would substantiate the overcharges, but the Superior Court deprived Gasorama of obtaining the

necessary information. While the mechanism of production of documents is not strictly a "deposition", it is an exploratory device intended to uncover facts so that a propounder may thereafter prove his legal argument in a litigation. *See Town of River Junction v. Maryland Casualty Co.*, 110 F.2d 278, 134 ALR 727 (5th Cir.), *cert denied*, 310 U.S. 634, 60 S. Ct. 1077, 84 L. Ed. 1404 (1940). The only way that Gasorama could defeat Imperial's claim was through the establishment of illegal overcharges. Gasorama did not have the faintest interest in harrassing or delaying the litigation. It just wanted to defeat the claim filed against it.

We fall squarely within the framework proposed in *Washington v. Cameron*, 411 F.2d 705, 711 (1969) that "It is incumbent upon the party seeking answers to demonstrate that his inquiry is directed toward establishing the material facts and that upon receipt of those answers he will be armed to defend against that motion (for summary Judgment)". In the same context in *Barnes v. A. Sind & Associates*, 32 FRD 39, 41, reversed on other grounds, 341 F.2d 676, the Court of Appeals reversed because the District Court failed to give the opposing part "appropriate notice" of its right to contest the material facts set forth in the moving papers submitted in support of the motion for summary judgment. In *Johnson v. RAC Corporation*, 491 F.2d 510, 514, (1974), the Court held that a party "should have been afforded the opportunity as the procedure followed in Barnes suggests, to employ discovery in order to counter, if he could, the facts set forth in the defendant's affidavit or to establish a factual basis for his action against the defendant; and this is especially so since the facts on which defendant predicates its motion in this respect lie

peculiarly within the knowledge of the defendant." Another case in point is *Parish v. Howard*, 459 F.2d 616 (1972), where discovery was completed and the party given sufficient opportunity to develop and present to the trial court the nature of the circumstances surrounding its allegations, before a motion for summary judgment was granted.

CONCLUSION

The decision below frustrates the constitutional mandate for due process. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted.

IN THE SUPERIOR COURT OF PUERTO RICO
CAGUAS PART

IMPERIAL GAS COMPANY OF PUERTO RICO, INC.,

Plaintiff

v.

GASORAMA, INC.,

Defendant

Civil No. CS-78-5

COLLECTION OF MONEY

SUMMARY JUDGMENT

This is an action for collection of money involving $112,602.98, plus $13,091.94 for a promissory note, and $3,500 for expenses, costs, and attorney's fees. The original complaint was filed on January 4, 1978, and amended on May 15, 1978, in order to include the collection of the promissory note.

Defendant finally answered the amended complaint on October 18, 1978, and in its answer included a counterclaim alleging illegal collection for liquid gas on the part of plaintiff from January 1974 to September 30, 1977, and a violation of the federal laws and regulations in effect.

Before filing its answer to the complaint on October 18, 1978, defendant persistently asked plaintiff to produce a series of documents dating from before 1977, the year on which plaintiff's original cause of action is based. Plaintiff supplied all the evidence relating to the year 1977 and to the promissory note paid as documentary evidence in support of its cause of action.

In its determination to obtain the documents corresponding to 1974 on, defendant moved for several orders and hearings. Some of said orders are inconsistent among themselves in

the sense that on March 27, 1978, the court ordered the production of the documents covering the period from 1974 to 1977; said order was subsequently set aside through another order where the court stated that the defendant had persistently delayed the proceedings. Finally, in November 1978, the court returned to its original position of allowing the production of the documents requested by the defendant.

Lastly, plaintiff filed a motion for summary judgment accompanied by a sworn statement and a motion for the dismissal of the counterclaim. Defendant did not oppose the same with a sworn statement and merely reiterated its right to the production of the documents, among other allegations.

On March 23, 1979, which was the date set for arguing plaintiff's motion to dismiss and for summary judgment, the parties submitted their respective positions on the basis of the documents appearing in the record of the case.

There is no material controversy in connection with the following facts:

1. Gasorama, Inc. owes Imperial Gas Company of Puerto Rico, Inc. the following amounts:

(a) $112,602.98 for materials, fuel, and services supplied during 1977.

(b) $13,091.94 of principal, plus the stated interest at the rate of 9% per annum, which on April 30, 1978 amounted to $450.36, plus interest accrued until the principal obligation is paid in full. Said debt is evidenced by a promissory note executed before a notary on October 19, 1975. The sum of $3,500 was also agreed to cover expenses, costs, and attorney's fees.

(c) That steps were taken to collect the above-mentioned amounts before the complaint was filed, but they were unsuccessful.

(d) The amounts claimed are due, liquid and payable on demand.

The Economic Stabilization Act of 1970, 84 Stat. 799, Pub. L. No. 91-379, and its 1971 and 1973 amendments, 85 Stat. 743, Pub. L. No. 92-210 and 87 Stat. 27, Pub. L. No. 93-28, was in effect only during the period between 1970 and 1974.

In this case filed in 1978, defendant raises as a defense the violation of the provisions of a law which became effective on August 15, 1970, and expired on April 30, 1974, as provided in Section 218 of the act itself. Therefore, since said act has already expired this defense is meritless.

In support of its opposition, defendant cites some cases wherein the act was applied while it was in force, during the period comprised between 1970 and 1974. But as we have shown above, the act, which expired in 1974, is not applicable to certain facts which took place in 1977.

Plaintiff raises the issue of this court's lack of jurisdiction to entertain a claim based on the provisions of the Economic Stabilization Act. Plaintiff is right, for sections 210 and 211 expressly grant U.S. District Courts original and exclusive jurisdiction to entertain

claims for damages and other types of claims arising from violations to said act. Besides, as we said before, said violations do not exist, for the facts took place after the expiration of the act.

For the foregoing reasons, pursuant to Rules 36.5 and 44.4(e) of the Rules of Civil Procedure in effect, the Court renders judgment in favor of plaintiff for the amounts mentioned above, supra 1, a, b, plus legal interest from the date when the cause of action regarding the $112,602.98 (1-a, supra) arose, plus $5,000 for attorney's fees.

The counterclaim is dismissed.

TO BE ENTERED AND NOTIFIED.

Given in Caguas, Puerto Rico, this 25th day of April, 1979.

(Sgd)

Roberto R. Muñoz Arill
Superior Court Judge

IN THE SUPERIOR COURT OF PUERTO RICO

CAGUAS PART

IMPERIAL GAS COMPANY OF PUERTO RICO, INC. — CIVIL NO. CS-78-5

Plaintiff

v. — COLLECTION OF MONEY

GASORAMA, INC.

Defendant

EXPLANATORY RESOLUTION AND ORDER

We hereby make clear that the term "claim" appearing on page 3 of our judgment of April 25, 1979, naturally refers to the counterclaim.

We also clarify plaintiff's possible confusion in its Motion for Reconsideration, which we hereby deny, where it cites the Energy Conservation Act, Pub. L. No. 94-163 in the last paragraph of page 3. Said Act has an entirely different purpose from the Economic Stabilization Act of 1970 discussed in the judgment. See the legislative history of both acts.

TO BE NOTIFIED.

In Caguas, Puerto Rico, this 18th day of May, 1979.

(Sgd.) ROBERTO R. MUÑOZ ARILL
SUPERIOR COURT JUDGE

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

Imperial Gas Company of P.R., Inc.,

Plaintiff-respondent

v. No. R-79-212 Review

Gasorama, Inc.,

Defendant-petitioner

RESOLUTION

In San Juan, Puerto Rico, this 28th day of June, 1979.

The petition for review is hereby denied.

It was so agreed by the Court and certified by the Clerk. Mr. Chief Justice Trías Monge and Mr. Justice Martín took no part in this decision.

Ernesto L. Chiesa
Clerk

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

Imperial Gas Company of P.R. Inc.,

Plaintiff-respondent

v. Review

Gasorama, Inc. No. R-79-212

Defendant-petitioner

Division composed by its President Mr. Justice Torres Rigual, Mr. Justice Martín and Mr. Justice Díaz Cruz.

RESOLUTION

In San Juan, Puerto Rico, this 26th day of July, 1979.

The motion for reconsideration is denied.

It was so agreed by the Court and certified by the Clerk.

Ernesto L. Chiesa
Clerk

(Translation)

IN THE SUPREME COURT OF PUERTO RICO

Imperial Gas Company of P.R., Inc.

Plaintiff-respondent

v. No. R-79-212 Review

Gasorama, Inc.,

Defendant-petitioner

Division composed by its President Mr. Justice Dávila and by Mr. Justice Irizarry Yunqué and Mr. Justice Negrón García.

RESOLUTION

In San Juan, Puerto Rico, this 16th day of August, 1979.

The motion for reconsideration is denied.

It was so agreed by the Court and certified by the Acting Clerk.

Miguel Mercado Ruiz
Acting Clerk

CLERK'S CERTIFICATE

I, Ernesto L. Chiesa, Clerk of the Supreme Court of of Puerto Rico, DO HEREBY CERTIFY:

That the annexed documents are photocopies of the official translation from Spanish into English (said translation having been made under the authority of Act No. 87 of May 31, 1972) of the Summary Judgment rendered by the Superior Court of Puerto Rico, Caguas Part, on April 25, 1979, the Explanatory Resolution and Order of May 18, 1979, and three Resolutions of this Supreme Court dated June 28, 1979, July 26, 1979, and August 16, 1979, in the case of Imperial Gas Company of P.R., Inc. v. Gasorama, Inc.

IN WITNESS WHEREOF, at the request of the interested party, and upon payment of the corresponding fees, I have hereunto set my hand and affixed the seal of this Court in San Juan, Puerto Rico, this 9th day of November 1979.

Ernesto L. Chiesa
Ernesto L. Chiesa
Clerk
Supreme Court of Puerto Rico

By: Miguel Mercado
Under-Secretary